The Builder.

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IN December last, as our readers will remember, Mr. Mair obtained a verdict against Mr. Ward (a gentleman residing in the Isle of Wight), in an action brought to recover money due to Mr. Mair for professional services.* The charge consisted of a commission of five per cent. upon the amount expended on the premises, and a certain sum for travelling expenses, time occupied in journeys, and money paid for the defendant. Architects who were called on the part of the plaintiff, deposed that the payment of five per cent. was invariably made to all architects in similar circumstances. They all stated, moreover, that without reference to such a custom, the services of the defendant were worth the money which he claimed over and above what he had received. Lord Denman denied the right to charge a commission, notwithstanding the positive evidence of the architects as to the existence of the custom to that effect. His lordship, however, told the jury that they were at liberty to give the sum in question to the plaintiff, or any other lesser sum that they might think proper, as money which he deserved to receive for the services he had rendered.

The jury returned a verdict for the whole sum claimed, with the special statement, as it seems (although we doubted it at the time), that they did not give that amount of damages upon the ground of commission, but because they considered it only an adequate reward for the services rendered. And fortunate it was for Mr. Mair, in the sequel, that this reservation was made.

On the 12th of last month, the Attorney-General applied to the court for a rule calling upon the plaintiff to shew cause why there should not be a new trial, upon the ground that as the "particular" claimed the money entirely in the character of a per centage, and as, according to the opinion of Lord Denman, the claim could not be allowed upon this ground, the jury not having power to go beyond the particular, ought to have found a verdict for the defendant. That they had not done so, the learned gentleman contended to be the result of his lordship having stated, that they were at liberty to fall back from the "particular" upon the declaration. This, according to the Attorney-General, amounted to a misdirection, and upon that ground the present motion was made.

Mr. Justice Patteson intimated, that although the jury found for the sum demanded as a per centage, yet, as it appeared that in returning the verdict they stated expressly that they did not give that sum upon that ground, it was possible that they only assumed the principle of the per centage as a convenient principle of calculation, or perhaps as a means of avoiding the necessity of making any particular calculation at all. Lord Denman desired that the affidavits should be handed up; and the Court took time to consider the application.

Last week the Court gave judgment, through Lord Denman, to the effect that although the jury rejected the claim as grounded upon the commission, they were justified in awarding the money as a compensation for labour. The rule for the new trial was therefore discharged.

We cannot allow this opportunity to pass, without again calling the attention of the architectural profession to the unsettled state in which the question of remuneration rests. It seems tolerably clear now, that a commission cannot be recovered by an action-at-law, and that architects must henceforth keep accurate accounts of the time occupied in the service of their different employers, in order that they may substantiate their claim on other grounds than that of commission.

The present custom, which is universally understood, is a convenient one both for the public and the profession, notwithstanding the objection there may be to it, and the opportunity it affords members of the bar to impute degrading motives to architects, which they seldom overlook. Even the Attorney-General, in the case in question, is reported to have said, that the evidence adduced at the trial established the important fact, that the plaintiff might, by abstaining from so large an outlay upon this building, have materially diminished his claim for commission!!

This of course, either meant nothing, or that architects were such a set of confounded rogues (devoid alike of honesty and gentlemanly feeling), that they would waste their employers' money by hundreds, in order to put trumpery fives into their own pockets. Fie, fie, Sir Frederick, you know better.

In consequence of our previous remarks, already alluded to, we received several communications relative to the ordinary charges of architects for different services, shewing (as we believed was the case) that some difference of opinion exists in this respect.

A report from the surveyor-general to the Secretary of the Treasury, dated 16th Sept., 1826, and a report of a select committee of the House of Commons in 1828 (quoted in Mr. Noble's "Professional Practice of Architects,") afford some useful information.

According to the latter, Sir Jeffrey Wyattville stated, "That he always received 5 per cent. on the outlay, and was also paid *for measuring the works*, wages for clerk of works, and for *his journeys*;" but he did not explain whether "*journeys*" meant travelling expenses only or included a sum for lost time. Sir Jeffrey's charging for measuring, in addition to his per centage, is, perhaps, a sufficient ground for forming an opinion, that such was not the case. Philip Wyatt, his brother, charged 5 per cent. on the expenditure, and wages for clerk of works and his travelling expenses, *if to any considerable distance*, but made no claim for *measuring or loss of time*. Mr. Nash and Sir Robert Smirke in the report before alluded to, confirmed the evidence of Sir Jeffrey as to *per centage only*, but neither made any remark in respect of measuring or journeys. Messrs. Cockerell, Hardwick, Soane, Wilkins, Seward, and Pilkington, all included measuring in their commission of 5 per cent.

At the late trial, all the architects who were examined, agreed in charging travelling expenses in addition to the 5 per cent.; but on the question of charging for the *time* occupied in travelling, there was a difference of opinion. Strictly speaking, however, there cannot be any doubt about it. If an architect is not overpaid by 5 per cent. for designing and superintending a building within a moderate distance from his habitation, it is quite certain that he will be much *under*paid, if every visit cost him a day, for example, instead of an hour. An architect's time is his stock in trade, and for that he must be paid.

For executing very large works, a less commission may reasonably be taken; and for works of trifling amount, say under 500*l*., if drawings be made, a small additional charge ought to be allowed, as 5 per cent in such cases cannot remunerate the architect.

The same may be said in respect of additions and alterations, which occupy time, and require much thought, without so much apparent result as in new erections. In works by contract, should some ruinously low tender be accepted, often requiring increased watchfulness on the part of the architect, it is hardly fair that his commission should be taken on that amount: the honest value of the works done should be the guide. So when employers cut their own timber, make their own bricks, or buy their own slates, &c., the value of these should of course be added to the general amount of the works, and the commission be taken on the whole.

We shall return to the subject hereafter.

* See p. 606, vol. iii.

SUGGESTIONS FOR THE REVISION OF THE BUILDINGS ACT.

MR. EDITOR,—A reference to the pages of your journal and of the public press generally, will fully justify the conclusion at which all parties interested in building operations, in London and its neighbourhood, have now arrived, viz., that the Metropolitan Buildings Act has failed to effect those objects which the legislature had in view in framing it, and that an immediate and searching amendment of its provisions is imperatively required. It would be useless to recapitulate the causes of this failure, and of the general dissatisfaction which prevails with respect to many of its enactments, or to remark upon the mode in which they have been administered, without at the same time suggesting some remedy for the evils complained of; but it is absolutely necessary that the causes of failure, and of the prevailing dissatisfaction should be stated broadly and plainly, or no proper remedy can be applied; and as my professional experience of its operations has been considerable, not only in the capacity of a district surveyor, but through an extensive private practice, I venture to solicit a place in your columns for the following observations, which are made with a strong desire to improve the Act, and render it as far as possible what it was intended to be—a great public good.

The failure and dissatisfaction referred to, appear to me to have arisen as well from defects in the Act itself, as from the mode in which it has been administered.

In dealing with the first proposition, it will be impossible (if for no other cause than an undue occupation of your pages) to enumerate all the existing defects; there is, however, one pervading the whole measure, which appears to me a primary cause of the failure, viz., an unnecessary interference with private rights beyond what is really necessary to protect the public; protection to the public being in my mind a sufficient, but the only reason upon which such an act can be justified, and the only basis upon which its provisions should be founded—an act which compels me, because my property is within a certain limit, to deal with it by a multitude of restrictions, affecting its value in a totally different manner from that of my neighbour, who happening to be just without this limit, is left to dispose of and build on his property, in any manner that he considers most conducive to his interest.

The two great objects necessary in any Building Act for the protection of the public appear to be, first, such sanatory regulations as will secure good ventilation, by wide streets, sufficient back areas, and effectual drainage; and secondly, the formation of such incombustible party constructions as will prevent the communication of fire from one building to another. Beyond the provisions necessary for effecting these objects, it is undesirable for the legislature to interfere, and such interference has, I contend, been one great and just cause of public dissatisfaction with the present Building Act, compelling the district surveyor

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